

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>ROGER SCOTT BRYNER, Plaintiff,</p> <p>vs.</p> <p>SVETLANA BRYNER, Defendant.</p>	<p>ORDER ADOPTING REPORT AND RECOMMENDATION</p> <p>Case No. 2:09-CV-161 Judge Dee Benson</p>
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Before the Court is the Report and Recommendation issued by United States Magistrate Judge Samuel Alba on July 20, 2009, recommending that Defendant's Motion to Dismiss be granted in part with respect to Plaintiff's § 1983 and mail fraud claims, and recommending that the court decline to exercise jurisdiction over the remaining state law claims. Additionally, the magistrate judge recommended that Plaintiff's claim of a violation of the automatic bankruptcy stay be referred to the bankruptcy court, and that Plaintiff's motion to consolidate be denied. (Dkt. No. 35.)

The parties were notified of their right to file objections to the Report and Recommendation within ten (10) days after receiving it. On August 4, 2009, the Plaintiff filed a document titled "Verified memorandum in support of motion to recuse judge Alba and to

reconsider his rulings which were based upon improper ex-parte contact.” (Dkt. No. 37.) After review of the content of Plaintiff’s *pro se* motion, which seeks review of the magistrate judge’s report, the Court finds that Plaintiff’s “motion” is more appropriately characterized as an objection to Report and Recommendation, and will consider it as such. On August 17, 2009, the Defendant filed a response to the Plaintiff’s objections.

Having reviewed all relevant materials, including Plaintiff’s objections, Defendant’s response, the transcript of the oral argument before the magistrate judge, and the reasoning set forth in the magistrate judge’s Report and Recommendation, the Court agrees with the analysis and conclusion of the magistrate judge. Moreover, the Court notes that Plaintiff does not appear to object to or dispute the legal analysis or rationale behind the recommendations issued by the magistrate judge. Rather, Plaintiff’s objections appear to focus almost exclusively on comments which occurred during oral argument which are unrelated to the legal issues before this Court.

Accordingly, the court ADOPTS the Report and Recommendation and issues the following order:

1. Defendant’s Motion to Dismiss is GRANTED in part with respect to Plaintiff’s 42 U.S.C. § 1983 and mail fraud claims;
2. The court declines to exercise jurisdiction over the remaining state law claims of fraud, abuse of process, spoliation of evidence, and intentional infliction of emotional distress, and those claims are DISMISSED;
3. Plaintiff’s claim of a violation of the automatic bankruptcy stay under 11 U.S.C. § 362 is REFERRED to the bankruptcy court for further proceedings; and
4. Plaintiff’s Motion to Consolidate is DENIED.

In addition, having reviewed the relevant materials, including the transcript of the July 7, 2009 oral argument, the Court finds there is no basis for the requested disqualification of Magistrate Judge Alba. Therefore, to the extent Plaintiff's motion or objection can be construed as a request to have Magistrate Judge Alba disqualified, Plaintiff's motion is DENIED.

IT IS SO ORDERED.

Dated this 10th day of September, 2009.

A handwritten signature in black ink, reading "Dee Benson". The signature is written in a cursive, flowing style. The first name "Dee" is written with a large, stylized 'D' that loops around the 'e'. The last name "Benson" is written in a more standard cursive script.

Dee Benson
United States District Judge